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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/932,081	08/20/2001	Donald L. Schmidt		5461

7590

03/26/2004

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EXAMINER

VARNER, STEVE M

ART UNIT	PAPER NUMBER
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3635

DATE MAILED: 03/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/932,081

Applicant(s)

SCHMIDT, DONALD L.

Examiner

Steve M Varner

Art Unit

3635

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 April 2001.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) 3 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 13-17 is/are allowed.
- 6) ☒ Claim(s) 1,2 and 7-12 is/are rejected.
- 7) ☒ Claim(s) 4-6 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim 3 is cancelled.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 8, are rejected under 35 U.S.C. 102(b) as being anticipated by Doran.

Regarding claims 1, Doran shows first (104) and second (106) insulating panels formed from expanded foam (Abstract). Doran teaches tie brackets (126) spanning the first (104) and second (106) insulating panels, which form a void. Doran teaches a first interlocking member (110) and a second interlocking member (116) (Fig. 11).

Doran shows principally flat surfaces (104) comprising a series of male extensions (120) protruding therefrom (Fig. 11).

Regarding claim 2, Doran shows the series of protrusions (120) of the first and second interior surfaces are substantially rectilinear and face one another in an opposing manner.

Regarding claim 8, Doran shows the centers of the interlocking members spaced apart (Fig. 11). Doran does not show this distance as a foot. It would have been an obvious design choice to make this distance a foot.

Claim Rejections - 35 USC § 103

Art Unit: 3635

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 7, 9, 10, are rejected under 35 U.S.C. 103(a) as being unpatentable over Doran.

Regarding claim 7, Doran reveals the basic claimed structure. Doran reveals one tie bracket (126) including a plurality of tie brackets each having a centerline spaced apart from the vertical centerline of every adjacent tie bracket (Fig. 11) Doran does not state this spacing to be a whole number multiple of measurements of one foot. It would have been an obvious design choice to make this spacing a whole number multiple of measurements of one foot to provide periodic connection between the forms.

Regarding claim 9, Doran shows each interlocking member greater than one inch in length.

Regarding claim 10, Doran shows the forms are straight (Fig. 11).

Claims 11, 12, are rejected under 35 U.S.C. 103(a) as being unpatentable over Doran in view of Moore, Jr.

Doran shows the basic claimed structure. Doran does not show a corner insulating unitary panel with a long and short leg. Moore, Jr. shows a corner insulating unitary panel (39) (Col. 10, Line 45-50) with a long and short leg. (Fig. 1) It would have been obvious to one of ordinary skill in the art at the time the present invention was made to use a corner insulating unitary panel as in Moore, Jr. in the structure of

Art Unit: 3635

Vaughan et al. in view of Doran to form concrete corners. Dimensions of the corner form would be an obvious design choice to conform to standard building components.

Claim Objections

Claim 4-6 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Allowed Claims

Claims 13-17 are allowed.

Response to Arguments

Applicant's arguments filed 12/22/03 have been fully considered but they are not persuasive.

Applicant argues that the first interlocking member and the second interlocking member are disposed to oppose parallel movement.

Examiner maintains that this limitation is functional and Doran's interlocking member's act to oppose parallel movement of the forms vertically to each other.

Applicant argues that the motivation to combine Vaughan et al. with Doran to add strength while reducing concrete usage is using hindsight.

Examiner has relied solely upon Doran in the rejection of claim 1 and does not use the addition of strength while reducing concrete usage motivation statement anymore.

Applicant argues that the location of the tie brackets is not an arbitrary design choice.

Examiner maintains that the tie brackets could be placed at any location to provide strength and connection.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Martin et al. shows a concrete forming system with brace ties. Cormier reveals web for insulated concrete form.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steve M Varner whose telephone number is 703 308-1894. The examiner can normally be reached on M-F 7:30-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl D Friedman can be reached on 703 308-0839. The fax phone numbers

Application/Control Number: 09/932,081

Page 6

Art Unit: 3635

for the organization where this application or proceeding is assigned are (703) 872-9306 for regular communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 308-1113.

SV
March 17, 2004


BRIAN E. GLESSNER
PRIMARY EXAMINER